

Carpenters District Council of Houston & Vicinity and its Member, Millwrights Local Union No. 2232, a/w United Brotherhood of Carpenters and Joiners of America, AFL-CIO-CLC and Blumenthal Sheet Metal Co. and Sheet Metal Workers' International Association, Local Union 54. Case 16-CD-147

September 30, 1991

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed June 5, 1991, by the Employer, alleging that the Respondent, Carpenters District Council of Houston & Vicinity and its Member, Millwrights Local Union No. 2232 (Millwrights), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by the Sheet Metal Workers' International Association, Local Union 54 (Sheet Metal Workers). The hearing was held June 25, 1991, before Hearing Officer Olivia Garcia Boultt. The Employer, the Millwrights, and the Sheet Metal Workers filed posthearing briefs.

The National Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a Texas corporation, is engaged in the business of sheet metal contracting at its facility in Houston, Texas, where in the 12 months preceding the hearing it derived gross revenues in excess of \$50,000 from performance of services for customers directly engaged in interstate commerce, including General Foods Maxwell House. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Millwrights and the Sheet Metal Workers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer is a contractor at the General Foods Maxwell House plant in Houston, Texas, where it fabricates, installs, maintains, and repairs food processing systems. James Campbell, the Employer's general manager, testified without contradiction that the Employer has been a contractor at the Maxwell House fa-

cility since the 1940s. It has been performing the work in dispute since at least the late 1980s. The Employer's employees are now, and since the 1920s have been, represented by the Sheet Metal Workers, with whom the Employer is signatory to a collective-bargaining agreement effective from April 1, 1989, through March 31, 1992.¹ Article 1 of the agreement, entitled "Jurisdiction of Work," provides:

This agreement covers the rates of pay and conditions of employment of all employees of the Employer engaged in but not limited to the (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning adjustment, alteration, repairing and servicing of all ferrous or non-ferrous metal work and all other materials used in lieu thereof and of all air-veyour systems and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of all air handling equipment and duct work; (d) the preparation of all shop and field sketches used in fabrication and erection; including those taken from original architectural and engineering drawings or sketches; and (e) all other work included in the jurisdictional claims of Sheet Metal Workers' International Association.

The constitution and ritual of the Sheet Metal Workers' International Association, incorporated into the collective-bargaining agreement between the Employer and the Sheet Metal Workers in subpart (e) above, claims in article 1, section 5, "Trade Jurisdiction," work including the following:

any and all sheet metal work used in connection with or incidental to the equipment and operation of . . . mills, factories, warehouses, manufacturing plants . . . including elevator legs and enclosures, chutes, hoppers, carriers, spirals, automatic and other conveyors . . . pipes and fittings . . . blowers (subsection 5(i)); and the fastening of any and all materials and equipment specified in this jurisdictional claim . . . the making of all connections, attachments, seams and joints (subsection 5(a)).

The Millwrights have never had a collective-bargaining relationship with the Employer. The Millwrights have had collective-bargaining agreements with employers other than Blumenthal, and those employers have employed millwrights to perform work at the Maxwell House facility similar to the work in dis-

¹The agreement is between the Sheet Metal Workers and the Houston Sheet Metal Contractors Association, of which the Employer is a member.

pute from the 1940s² until the late 1980s. According to uncontradicted testimony by millwright Cecil Sparks, employees represented by the Millwrights installed nearly all the machinery at Maxwell House when it moved to its present location in 1946. The Millwrights' business manager, Mike Higgins, testified that on several occasions since 1988 he unsuccessfully attempted to recapture the disputed work by soliciting officials of Maxwell House and General Foods Corporation to influence the Employer to negotiate a collective-bargaining agreement with the Millwrights.

On the morning of May 28, 1991, the Millwrights picketed the Employer, *inter alia*, at the employee parking lot and the contractors' gate at the Maxwell House facility. The picket signs stated

This is to advise the public that Blumenthal does not employ members of or have a contract with Carpenters District Council of Houston & Vicinity. This dispute is with Blumenthal Sheet Metal only. This is not intended to induce or coerce other employers, their employees, or their suppliers.

Blumenthal Manager Campbell spoke with Millwrights' business manager, Higgins, that afternoon by telephone. Campbell testified that he asked Higgins why the Millwrights were picketing Blumenthal, and Higgins responded that "he just wants to get his millwrights in there [Maxwell House] and do the work." Campbell asked "what it would take to get the picket lines down," and Higgins said "[w]e need to sit down and negotiate a contract, put some of our millwrights to work."

The Millwrights continued picketing the Employer at the Maxwell House worksite on May 29, 1991, but confined the picket line to the contractors' gate. On May 29, Millwrights' representative J. D. McClister visited Campbell and told him that the Millwrights would continue picketing for "[a]s long as it takes . . . we just want you to put our millwrights to work." McClister added that he "couldn't guarantee" that Millwrights would discontinue picketing. On May 30, Millwrights began picketing at the Employer's fabrication shop in addition to the Maxwell House worksite. Picketing continued at both locations until about June 5, 1991, when counsel for the Millwrights notified the Board's Regional Director for Region 16 that it would withdraw the pickets pending resolution of this jurisdictional dispute by the Board.

B. Work in Dispute

The work in dispute involves the installation of transitions, metal bins and spouting over 10 gage, screw augers, blowers, grinders, rotary valves, slide gates,

and bucket elevators and the setup of machinery performed by employees of Blumenthal Sheet Metal Co. at the General Foods and Maxwell House facility located at Houston, Texas.³

C. Contentions of the Parties

The Employer and the Sheet Metal Workers contend that reasonable cause exists to believe that the Millwrights engaged in conduct which violated Section 8(b)(4)(D) of the Act. They assert that the Millwrights established a picket line with the object of inducing the Employer to enter into a collective-bargaining agreement with the Millwrights and to assign the disputed work, presently performed by the Employer's employees represented by the Sheet Metal Workers, to employees represented by the Millwrights. Further, they allege that the Employer does not have a collective-bargaining agreement with the Millwrights, but that the Employer and the Sheet Metal Workers are parties to a collective-bargaining agreement. They contend that these and other factors, including the Employer's preference and past practice and economy and efficiency of operations, favor the continued assignment of the disputed work to the Employer's employees represented by the Sheet Metal Workers.

The Millwrights contend that the work should be awarded to employees it represents based on jurisdictional awards between the Carpenters International Union and the Sheet Metal Workers' International Union, International union agreements, area and industry practice, past practice, skills, economy and efficiency.

D. Applicability of the Statute

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

The parties have stipulated, and we find, that there is no agreed-on method for voluntary adjustment of their dispute. We further find, based on the Millwrights' picketing the Employer at its fabrication shop and Maxwell House worksite, that reasonable cause exists to believe that a violation of Section 8(b)(4)(D) has occurred. Accordingly, we find that the dispute is properly before the Board for determination.

²From the 1940s until 1951, the Millwrights was part of Carpenters Local No. 213. They obtained a separate charter in 1951.

³The Millwrights would also include in its claim the installation of pumps and compressors. The parties have stipulated, however, that the Employer does not perform such work at the Maxwell House facility. Thus, the installation of pumps and compressors is not part of the work in dispute.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certifications and collective-bargaining agreements

There is no evidence that the Board has certified the Sheet Metal Workers or the Millwrights as the collective-bargaining representative of the Employer's employees. Since the 1920s, however, the Employer and the Sheet Metal Workers have been parties to successive collective-bargaining agreements. Article 1 of their current agreement covers the work in dispute. On the other hand, the Employer has never had a collective-bargaining relationship with the Millwrights. Accordingly, we find that this factor favors awarding the disputed work to employees represented by the Sheet Metal Workers.

2. Employer preference and past practice

The Employer has assigned the disputed work to employees represented by the Sheet Metal Workers and prefers that assignment. Accordingly, we find that this factor favors awarding the disputed work to employees represented by the Sheet Metal Workers.

3. Area and industry practice

The evidence regarding area and industry practice is mixed. In addition to the Employer, the record shows that at least two other Houston-area employers perform work similar to the work in dispute using employees represented by the Sheet Metal Workers. The record also shows, however, that employees represented by the Millwrights have performed work of the type in dispute. Thus, the record indicates that the kind of work in dispute is performed by both sheet metal workers and millwrights. This factor does not favor awarding the disputed work to either group of employees.

4. Skills and training

The evidence shows that both sheet metal workers and millwrights complete 4-year apprenticeship programs and receive extensive on-the-job training. Members of both trades have traditionally performed work similar to that in dispute for various Houston-area employers. Thus, employees represented by either the

Sheet Metal Workers or those represented by the Millwrights possess the requisite skills and training to perform the disputed work. Accordingly, this factor does not favor awarding the disputed work to either group of employees.

5. Economy and efficiency of operations

The Employer asserts that it is more efficient and economical to perform the disputed work using employees represented by the Sheet Metal Workers. Uncontroverted testimony by Employer General Foreman Kenneth Rose shows that the Employer's work at the Maxwell House facility primarily consists of fabricating and installing entire food processing systems which sometimes span 15 floors in height and involve hundreds of sheet metal parts. He further testified that the disputed work constitutes only portions of entire systems. Thus it is more economical and efficient to assign the work to sheet metal workers who are able to perform the full range of work required to fabricate and install the systems. Millwrights would make partial installations and otherwise would stand by. Finally, the Employer's employees, some of whom have worked at the Maxwell House facility for more than 10 years, are thoroughly familiar with the entire plant.

We find that the factor of economy and efficiency of operations favors awarding the disputed work to employees represented by the Sheet Metal Workers.

6. Jurisdictional agreements and awards and work assignments

The Millwrights contends that its history of awards in jurisdictional disputes, interunion agreements, and work assignments by employers to employees it represents favor award of the work in dispute to employees it represents. It produced extensive documentary evidence in support. For the following reasons, we do not accord significant weight to this evidence.

Regarding evidence of awards in other jurisdictional disputes, we note that the Employer was not a party to any of the jurisdictional disputes relied on by the Millwrights, and that none of those disputes involved work at the Maxwell House facility. In fact, only three of the awards involved disputes between the Millwrights and the Sheet Metal Workers. Moreover, most are limited to specific jobs. Finally, the most recent award issued in 1968, and others are more than 40 years old.

There is no evidence that the Millwrights and the Sheet Metal Workers are parties to an interunion agreement governing assignment of the work in dispute. The record contains only one jurisdictional agreement between the Sheet Metal Workers and the Millwrights (or its predecessor organization, Carpenters Union). That agreement was signed in 1928 and in-

volved work associated with construction of an unspecified type of building in Chicago, Illinois.⁴

Based on these considerations, we find that this factor does not favor awarding the work in dispute to either group of employees.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the Sheet Metal Workers are entitled to perform the work in the dispute. We reach this conclusion relying on the collective-bargaining agreement between the Employer and the Sheet Metal Workers, the Employer's preference and past practice, and economy and efficiency of operation.

In making this determination, we are awarding the work to employees represented by the Sheet Metal Workers, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

⁴ As previously noted, under area and industry practice, evidence regarding the work assignments of other employers is mixed.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Blumenthal Sheet Metal Co. represented by Sheet Metal Workers' International Association, Local Union 54 are entitled to perform the work of installing transitions, metal bins and spouting greater than 10 gage, screw augers, blowers, grinders, rotary valves, slide gates, and bucket elevators and the set up of machinery at the General Foods and Maxwell House facility located at Houston, Texas.

2. Carpenters District Council of Houston & Vicinity and its Member, Millwrights Local Union No. 2232, a/w United Brotherhood of Carpenters and Joiners of America, AFL-CIO-CLC is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Blumenthal Sheet Metal Co. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Carpenters District Council of Houston & Vicinity and its Member, Millwrights Local Union No. 2232, shall notify the Regional Director for Region 16 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.